

City of Boston



Law Department

Thomas M. Menino
Mayor

(617) 635-4034
Fax: 635-3199

Merita A. Hopkins
Corporation Counsel

March 25, 1999


Megalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: In the Matter of the Petition of the State of Minnesota for Declaratory
Ruling;
CC Docket No. 98-1
Ex Parte Filing

Dear Ms. Salas:

Enclosed please find a copy of the City of Boston's telecommunications policy
and amendments to the policy. I would request that you include the policy in your record
on the above-entitled matter.

Sincerely,


Merita A. Hopkins
Corporation Counsel

cc: David Kirschner

No. of Copies rec'd 2
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Dated: April 28, 1994

IN PUBLIC IMPROVEMENT COMMISSION
OF
THE CITY OF BOSTON

POLICY RELATING TO GRANTS OF LOCATION
FOR NEW CONDUIT NETWORK FOR THE PROVISION
OF COMMERCIAL TELECOMMUNICATIONS SERVICES

1. The policy objective of the City of Boston, acting through its Public Improvement Commission ("PIC", "the City", or "the Commission"), is, consistent with public interest, to maximize the availability of new conduit networks ("Networks") for the provision of commercial telecommunications services within the City and to minimize multiple street openings and resulting disruption to the public ways. This policy shall apply to each Network constructed within the Telecommunication Impact Area, as defined in the attached statement, and as adopted by vote of the PIC on March 1, 1990, and shall apply to Networks constructed outside said Telecommunication Impact Area if there is more than one Network to be constructed. Repair of conduit in such disrepair that substantial replacement is required shall be considered "new" conduit subject to this policy. The phrase commercial telecommunications services is intended to be broadly defined and be all-inclusive of any and all public or private telecommunications services provided in any manner by a Network operator.

2. Specifically, the PIC adopts the following policy objectives to be met in the construction, installation and maintenance of new conduit for the use of one or more Networks. The actions to be taken by the Network operators and the City will (i) minimize disruption to the City's public ways, (ii) allow the planned development of telecommunications facilities within the City to benefit Boston's economy, (iii) provide future Network applicants reasonable and timely access to City streets and (iv) facilitate the timely construction of all such Networks.

3. Therefore, pursuant to the authority vested in the PIC, the following policy is hereby adopted:

I. Minimize Disruption to the City's Public Ways.

4. The Public Improvement Commission has the duty to regulate and oversee the use of the City's public ways, subterranean spaces and air-rights. The Commission finds that the management of the public ways has been made more complex because of the recent increase in building construction in the core of the City, the attendant activity in and under City streets, and a corresponding increase in vehicular traffic. Further, the Commission finds that the depression of the Central Artery and construction of the Third Harbor Tunnel will create significant future complexities in all aspects of the management of Boston streets.

5. To minimize the number of street cuts and to allow all Network applicants reasonable access to City streets, in

principle only one new grant of location for new conduit for commercial telecommunications services will ordinarily be issued by the Commission for each downtown street or part thereof located within the Telecommunications Impact Area but such a grant may be made to two or even more applicants simultaneously.

6. Generally, the first responsible applicant for grants of location will become the "Lead Company" with the overall operational responsibility for the installation and maintenance of new conduit at the requested locations. The PIC will expect to communicate with only one such Lead Company concerning all aspects of a conduit construction project and future maintenance of the public ways no matter how many other firms are also licensed to occupy the designated locations. The PIC reserves the right to designate a Lead Company, if necessary, in furtherance of this policy.

7. Within five days following a preliminary review of its initial application by the staff of the PIC or at such other time as the PIC may allow, the Lead Company must notify all companies whose names are on file with the PIC and must give the same notice by publication. Such notices shall disclose where the Lead Company intends to construct conduit and contain a clear map of the proposed route or locations including all proposed lateral or connecting conduit to specific locations. The Lead Company shall invite all other firms to join with it in placing their own conduit and laterals in all opened streets on a cost-shared

basis. Interested companies have 10 business days from the receipt of the notice to respond to the Lead Company informing it of their intention to enter into a joint construction project, share costs, and jointly occupy some or all of the designated locations. Prior to and during construction, all service connections applied for from the Department of Public Works by a Lead Company or a Participant in a Network project after an original plan and map have been submitted as required herein shall notify all other participants in the Network project of such application and shall afford an opportunity for each to place conduit in such service connection if requested; in every case City conduit shall be installed in such service connections unless waived by the PIC.

8. Thereupon, all interested companies ("Participants") shall work with the Lead Company to submit a coordinated plan to the PIC. Each company shall file amended or simultaneous applications for the desired grants of location within 40 days of receipt of the initial notice from the Lead Company, or such other time as the PIC may allow. Each application will include specifications indicating the number and size of the conduits to be constructed as well as a plan for the maintenance of and access to the proposed conduit system. Ordinarily, grants of location will not be issued to the Lead Company or any other Participant in the project unless the PIC is satisfied that all interested firms have had an opportunity to place their conduit

in all the requested locations and each shall have executed a "Participant's Agreement" as defined in paragraph 10 of this policy with the Lead Company and the Lead Company shall have executed a "Lead Company Agreement", as defined in paragraph 15 of this policy. Among engineering specifications that may ordinarily be required, manholes or handholes shall be installed at major intersections, or other designated locations, at such appropriate intervals as the PIC may deem necessary. Laterals and service connections shall not ordinarily exceed 250 feet in length and shall be located to minimize traffic disruptions and future street openings. The use of pedestals or any surface mounted structures shall require both PIC and Department of Public Works approval.

9. Once the PIC has granted locations, the Lead Company must begin construction within 90 days, unless in conflict with the Commission's policies prohibiting winter holiday season construction; otherwise, its grants of locations shall expire and become void. Ordinarily, when any Network Conduit trench is being constructed, the City will inspect the trench area with a representative of the Lead Company prior to completion of construction. The City retains the right, upon inspection or upon determination that a condition hazardous to public health and safety exists as a result of Network construction, to order such additional work or modifications as may be required to correct any such defect or condition. Any increased fee, deposit

or additional cost incurred shall be deemed a shared cost for which Lead Company and Participants shall be liable.

All Participants in a Network at their sole cost and expense shall abide by all City of Boston and Department of Public Works rules, regulations and practices, including specifically requirements relating to street resurfacing and reconstruction; all costs of compliance shall be deemed shared costs among Network Participants.

During the backfilling of any trench area the City may, at its option, provide inspectors, the cost of which shall be paid for by all Network participants as a shared cost.

All Network participants shall abide by the City's special regulations pertaining to the list of streets which were reconstructed or resurfaced during the preceding 5 years, and shall be liable for all costs of cold planing and all costs of curb-to-curb resurfacing required for said streets. All such costs shall be deemed shared costs among all Network participants.

10. In the event that there is in fact more than one applicant for the same locations, all such applicants shall enter into a contract, the "Participant's Agreement", to construct, manage, and maintain the proposed conduit system on a cost-shared basis. Each Participant's Agreement shall be substantially in the form and content as attached hereto, entitled Model Participants Agreement.

11. Consistent with the public interest, the review of all license applications shall include a review by the PIC of any Lead Company Agreement or Participant's Agreement contract provisions, including but not limited to: sharing, disclosure, and certification of costs; escrow agreement; rights and responsibilities of the lead company; rights and responsibilities of other licensee companies; construction scheduling; coordination of access to the proposed conduit; maintenance of conduits; ownership, maintenance and access to manholes; liability issues; and administrative matters.

12. To assure that conduit capacity will be available in the future without the need to make repeated street openings, the City will normally contract with a licensee (or joint licensees) to install a spare or additional conduit (the "City Conduit") alongside any new conduit within the Telecommunications Impact Area or, in the event that there is more than one licensee in a Network to be constructed outside the Telecommunications Impact Area, in such Network, unless waived by the PIC according to paragraph 18 hereof. The City Conduit will parallel all such newly constructed conduit whether characterized as "trunk" or "lateral". City Conduit shall extend to the property line of any location to which the Lead Company or any Participant is connected. The City Conduit shall be deemed to be a shared cost among all licensees in a Network and shall be constructed by the licensee or joint licensees in such Network but thereafter the

City Conduit itself will be owned and maintained by the City of Boston, which will hold it for future use.

13. Network applicants applying to the PIC for new locations after streets have already been cut and new conduit installed, including the City Conduit, shall normally be expected to locate their cables in the City Conduit, or, upon appropriate application, in other existing conduit. The City Conduit, as installed, consists of four (4) separate 1-1/4 inch plastic pipe sections or their equivalent (each a "City Conduit Section") fused into a single bank. In order to assure non-discriminatory and efficient use of the City Conduit, and in order to promote efficiency of use, persons wishing to lease the City Conduit shall in any application for a grant of location demonstrate the need in fact for that number of City Conduit Sections for which grants of locations and rental agreements are sought, and no rental agreement shall be executed until and unless the PIC finds that the number of City Conduit Sections to be leased are in fact needed by such applicant and will be forthwith used by and useful to such applicant.}

In furtherance of this policy, subject to availability, the City will make available each City Conduit Section to any and all subsequent licensees for fair and reasonable compensation on a non-discriminatory basis, as generally set forth in the Model Lead Company Agreement in Section 4.4 and Schedule D thereof and as specifically set forth in the Model Rental Agreement defined

in this paragraph. The lump sum payment to be made pursuant to said Section 4.4, said Schedule D, and the Model Rental Agreement shall be made separately for each City Conduit Section to be leased. At the time the PIC grants any location for the use of any City Conduit Section, it shall determine an additional annual rental payment to be made based on a review of then current market data relating to the rental of comparable conduit in Boston. During the calendar year 1999 and every fifth year thereafter, the PIC shall make a finding of the applicable market rental rate for all leases of City Conduit Sections and such rental rate shall apply to each such lease for the next five calendar years. At the time the grant of location is made and the rental agreement is executed, pro-rated rent shall be payable for the remainder of the calendar year. Thereafter, all annual rent shall be paid in advance on or before the fifteenth day of January of each year.

Each lease of a City Conduit Section shall be in accordance with the terms and conditions of a standard rental agreement with the City (the "Model Rental Agreement") which shall be substantially in the form and content as attached hereto. Any person who leases a City Conduit Section shall be required to become a Participant in a Network and both the Lead Company and the lessee of City Conduit shall be required to execute a Model Assignment, Assumption and Consent substantially in the form attached hereto. The Model Rental Agreement shall also provide

that the lessee will assume its share of the City's existing obligations to any Lead Company for each City Conduit Section leased.

Any and all lateral or service connections constructed with respect to any leased City Conduit Sections, and any and all manholes or handholes constructed, shall be at the sole cost and expense of the lessee and shall only be installed after design approval by the staff of the PIC.

After a Network is constructed, the construction of new lateral conduit for the purpose of making service connections to particular addresses shall be governed by the provisions of a Lateral Lead Company Agreement between the City and a licensee, all as appearing substantially in the model Lateral Lead Company Agreement attached hereto. Licensees, other than a Lead Company that has already constructed new conduit networks may, upon execution of a Lateral Lead Company Agreement, perform construction of laterals according to the provisions of said agreement. Any licensee constructing laterals shall locate new City Conduit, that is, four (4) 1-1/4 inch pipes, in such locations at the sole cost and expense of the licensee, or in the event that other Participants locate conduit at such time, as a shared cost, as the case may be.

The PIC expressly recognizes the competitive necessity of establishing prompt service connections in each Network within the Telecommunications Impact Area, and requires that each

licensee constructing laterals, manholes, handholes or service connections facilitate such connections for all licensees in an expeditious manner. Any entity licensed to be in a Conduit System, including any lessee of a City Conduit Section, shall have the right to petition the Chairman of the PIC for enforcement of this policy in the event that any licensee fails to fulfill any of its obligations with respect to the construction of service connections or laterals in an expeditious manner.

14. All conduit whether existing or newly constructed may only be occupied, operated and maintained pursuant to a grant of location granted by the PIC, or the City's predecessor licensing authorities.

15. In order to implement this policy, a contract between the City and each Lead Company shall be required. The City and the Lead Company shall execute a contract, the "Lead Company Agreement", substantially in the form and content attached hereto, entitled, Model Lead Company Agreement. Through the Lead Company Agreement and the Participant's Agreement, licensees will agree to take all needed steps to abide by the PIC's policies and procedures, install the City Conduit, minimize street cuts, and take appropriate steps to minimize traffic disruption and damage to the integrity of city streets. Each Lead Company Agreement and each Participant's Agreement must be executed prior to any vote of PIC granting any location for any Network.

II. Encouraging the Orderly Creation Of Telecommunications Conduit That Will Materially Benefit Boston In The Future

16. Over time, the City seeks the construction of a conduit Network that will serve the needs of future telecommunications users, including public safety and other critical public services. Initially, such conduits will be located chiefly in the downtown financial district and Back Bay, but will also reach out to other neighborhood locations within the Telecommunications Impact Area. An extensive conduit system will eventually serve the maximum number of commercial and public buildings as well as such other locations as a licensee may apply for. The number and size of conduits to be installed as part of the new conduit system, as well as lateral branching, shall be approved by the PIC and incorporated into any license issued for a grant of location.

III. All Network Applicants Shall Have Access To City Streets On A Non-Discriminatory Economic Basis:

17. Future Network operators who are not joint licensees during the construction of new conduit may apply at any time for licenses to occupy the City Conduit. Consistent with paragraph 13 herein, the City will lease its conduit space to such subsequent Network licensees ("Future Participants") on a nondiscriminatory basis according to the terms and conditions set forth in the Model Rental Agreement with the City, and in accordance with the Model Lead Company Agreement and Model

Assignment, Assumption and Consent and specific executed Lead Company agreements relating to the specific locations which such Future Participants wish to utilize. The Commission recognizes that in certain cases not all future licensees will be able to utilize the City Conduit. If the City Conduit is unavailable or inappropriate, subsequent license applicants may be permitted to install their own new conduit.

18. The City retains the right to waive the City Conduit requirement; however, if it intends to waive the City Conduit requirement it shall give public notice of its intention to do so and the PIC shall vote to make such waiver and state the reasons for so doing. The City reserves the right to use its conduit for any purpose whatsoever, but its use will be compatible with other telecommunications uses in the same locations.

19. The PIC shall issue such rules and regulations as may be necessary to interpret and implement this policy.

IV. Facilitate Construction Of Networks.

20. The City will encourage the design and installation of new conduit for licensed Networks as quickly as possible. To this end, the procedure to apply for a revocable license for the grants of locations required prior to the construction or occupation of a conduit system is summarized as follows:

- 1) Applicants shall disclose to the PIC all data requested in the City's Request for Information. (See, e.g. Request dated May 6, 1988.)

- 2) Applicants will be given a timely and public opportunity to testify before the PIC on the merits of any license or joint license application.
- 3) Grants of location shall be made subject to conditions to assure compliance with the PIC policies, and procedures, as herein adopted or later amended.
- 4) Applicants issued grants of location shall simultaneously enter into a contract with the City concerning the manner in which new conduit shall be constructed and occupied.
- 5) Licensees shall be required to comply strictly with all ordinances, PIC procedures and regulations, contractual provisions and license conditions, as well as administrative procedures concerning street opening permits, construction scheduling, and traffic management.

Adopted by vote of the Public Improvement Commission on August 4, 1988.

Amended by vote of the Public Improvement Commission on March 1, 1990.

Amended by vote of the Public Improvement Commission on April 28, 1994.

Attest: _____
Executive Secretary
Public Improvement Commission

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